

NOT FOR PUBLICATION

JAN 24 2008

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE FRANCISCO HERNANDEZ  
PINEDA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 06-71140

Agency No. A96-357-158

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted January 14, 2008\*\*

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Jose Francisco Hernandez Pineda, a native and citizen of Mexico, petitions pro se for review of an order of the Board of Immigration Appeals upholding an immigration judge's decision denying his application for cancellation for removal.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the agency's continuous physical presence determination for substantial evidence. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006). We grant the petition for review and remand.

An intervening change in the law requires us to remand on the issue of continuous physical presence. In *Ibarra-Flores*, we held that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure and knowingly and voluntarily accepts the terms of departure. *See id.* at 619. In the record, there is no documentation showing that Hernandez Pineda was informed of the terms of his departures or that he accepted them voluntarily or knowingly, and the agency did not have the benefit of our decision in *Ibarra-Flores* at the time it addressed this issue.

Accordingly, we grant the petition for review and remand for further proceedings consistent with *Ibarra-Flores*.

**PETITION FOR REVIEW GRANTED; REMANDED.**